

## § 1313.5

## 23 CFR Ch. III (4–1–03 Edition)

(iii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circulars A–102 and A–87; and

(iv) It will maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or Federal fiscal year 1996 and 1997 can be used); and

(2) After being informed by NHTSA that it is eligible for a grant, submit to the agency, within 30 days, a Program Cost Summary (HS Form 217) obligating the Section 410 funds to alcohol-impaired driving prevention programs.

(3) Submit a State Highway Safety Plan by September 1 of each year, pursuant to 23 U.S.C. 402 and 23 CFR part 1200, that documents how the State intends to use the Section 410 grant funds.

(4) Submit an application for grant funds, which must be received by the agency not later than August 1 of the fiscal year for which the State is applying for funds.

(b) *Limitation on grants.* A State may receive grants for up to six fiscal years beginning after September 30, 1997, subject to the following limitations:

(1) After September 30, 1998, the amount of each basic grant in a fiscal year, under § 1313.5 or § 1313.6, shall equal 25 percent of the State's apportionment under 23 U.S.C. 402 for FY 1997, subject to the availability of funds. If a State qualifies for basic grants in a fiscal year under both § 1313.5 and § 1313.6, the total amount of basic grants in the fiscal year shall equal 50 percent of the State's 23 U.S.C. 402 apportionment for FY 1997, subject to the availability of funds.

(2) After September 30, 1998, the amount of a State's supplemental grant in a fiscal year, under § 1313.7, shall be determined by multiplying the number of supplemental grant criteria the State meets by five percent of the State's 23 U.S.C. 402 apportionment for FY 1997, except that the amount shall be subject to the availability of funds. The amount available for supplemental grants for all States in a fiscal year, under § 1313.7, shall not exceed ten percent of the total amount made available under 23 U.S.C. 410 for the fiscal year.

(3) In the first and second fiscal years a State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

(4) In the third and fourth fiscal years a State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

(5) In the fifth and sixth fiscal years a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

### § 1313.5 Requirements for a programmatic basic grant.

To qualify for a programmatic basic incentive grant of 25 percent of the State's 23 U.S.C. 402 apportionment for FY 1997, a State must adopt and demonstrate compliance with at least five of the following criteria:

(a) *Administrative license suspension or revocation system*—(1) *Criterion.* An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that:

(i) In the case of an individual who, in any five-year period beginning after June 9, 1998, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, shall:

(A) Suspend all driving privileges for a period of not less than 90 days if the individual refused to submit to a chemical test and is a first offender;

(B) Suspend all driving privileges for a period of not less than 90 days, or not less than 30 days followed immediately by a period of not less than 60 days of a restricted, provisional or conditional license, if the individual was determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol,

and is a first offender. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which such a license may be issued, or with statewide published guidelines, and in exceptional circumstances specific to the offender; and

(C) Suspend or revoke all driving privileges for a period of not less than one year if the individual was determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or refused to submit to such a test, and is a repeat offender; and

(ii) The suspension or revocation shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be operating a motor vehicle while under the influence of alcohol, in accordance with the procedures of the State.

(2) *Definitions*—(i) *First offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, once in any five-year period beginning after June 9, 1998.

(ii) *Repeat offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, more than once in any five-year period beginning after June 9, 1998.

(3) *Demonstrating compliance for Law States.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion.

(ii) To demonstrate compliance in subsequent fiscal years, a Law State shall submit a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

(iii) For purposes of this paragraph, *Law State* means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation that provides for each element of this criterion.

(4) *Demonstrating compliance for Data States.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for an administrative license suspension or revocation system, and data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(ii) To demonstrate compliance in subsequent fiscal years, a Data State shall submit, in addition to the information identified in paragraph (a)(3)(ii) of this section, data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(iii) The State can provide the necessary data based on a representative sample, on the average number of days it took to suspend or revoke a driver's license and on the average lengths of suspension or revocation periods, except that data on the average lengths of suspension or revocation periods must not include license suspension periods that exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iv) For the purpose of this paragraph, *Data State* means a State that has a law, regulation or binding policy directive implementing or interpreting

an existing law or regulation that provides for an administrative license suspension or revocation system, but the State's laws, regulations or binding policy directives do not specifically provide for each element of this criterion.

(b) *Underage drinking prevention program*—(1) *Criterion*. An effective underage drinking prevention program designed to prevent persons under the age of 21 from obtaining alcoholic beverages and to prevent persons of any age from making alcoholic beverages available to persons under the age of 21, that provides for:

(i) The issuance of tamper resistant driver's licenses to persons under age 21 that are easily distinguishable in appearance from driver's licenses issued to persons 21 years of age and older;

(ii) Public information programs targeted to underage drivers regarding drinking age laws, zero tolerance laws, and respective penalties;

(iii) A program to educate alcoholic beverage retailers and servers about both on- and off-premise consumption, and the civil, administrative and/or criminal penalties associated with the illegal sale of alcoholic beverages to underage drinkers;

(iv) An overall enforcement strategy directed at the sale and purchase of alcoholic beverages involving persons under the age of 21 that can be implemented locally throughout the State; and

(v) A prevention program that enlists the aid of persons under the age of 21.

(2) *Definitions*—(i) *Tamper resistant driver's license* means a driver's license that has one or more of the security features listed in Appendix A.

(3) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a description and sample materials documenting an underage drinking prevention program that covers each element of paragraphs (b)(1) (ii) through (v) of this section. The State shall also submit sample driver's licenses issued to persons both under and over 21 years of age that demonstrate the distinctive appearance of licenses for drivers under age 21 and the tamper resistance of these licenses.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall document any changes to the State's driver's licenses or underage drinking prevention program or, if there have been no changes, a statement certifying that there have been no changes in the State's driver's licenses or its underage drinking prevention program.

(c) *Statewide traffic enforcement program*—(1) *Criterion*. A Statewide traffic enforcement program that emphasizes publicity and is either:

(i) A program for stopping motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving under the influence of alcohol; or

(ii) A special traffic enforcement program to detect impaired drivers operating motor vehicles while under the influence of alcohol.

(2) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a comprehensive plan to conduct a program under which:

(A) Motor vehicles are stopped or special traffic enforcement is conducted on a Statewide basis, in major areas covering at least 50 percent of the State's population;

(B) Stops are made or special traffic enforcement is conducted not less than monthly;

(C) Stops are made or special traffic enforcement is conducted by both State and local (county and city) law enforcement agencies; and

(D) Effective public information efforts are conducted to inform the public about these enforcement programs.

(ii) The plan shall include guidelines, policies or operation procedures governing the Statewide enforcement program and provide approximate dates and locations of programs planned in the upcoming year, and the names of the law enforcement agencies expected to participate. The plan shall describe the public information efforts to be conducted.

(iii) to demonstrate compliance in subsequent fiscal years, the State shall submit an updated plan for conducting a Statewide enforcement program in the following year and information

documenting that the prior year's plan was effectively implemented.

(d) *Graduated driver's licensing system*—(1) *Criterion*. A graduated driver's licensing system for young drivers that consists of the following three stages:

(i) *Stage I*. A learner's permit may be issued after an applicant passes vision and knowledge test, including tests about the rules of the road, signs and signals. The State I learner's permit must be subject to the following conditions:

(A) Stage I learner's permit holders under the age of 21 are prohibited from operating a motor vehicle with a BAC of 0.02 or greater;

(B) Stage I learner's permit holders are prohibited from operating a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with State or local safety belt and child restraint laws;

(C) A licensed driver who is 21 years of age or older must be in any motor vehicle operated by the Stage I learner's permit holder at all times;

(D) Stage I learner's permit holders must remain conviction free for not less than three months; and

(E) The Stage I learner's permit must be distinguishable from Stage II and III driver's licenses;

(ii) *Stage II*. An intermediate driver's license may be issued after an applicant has successfully complied with the conditions of the Stage I learner's permit for not less than three months and passed a driving skills test. The Stage II intermediate driver's license must be subject to the following conditions:

(A) Stage II intermediate driver's license holders under the age of 21 are prohibited from operating a motor vehicle with a BAC of 0.02 or greater;

(B) Stage II intermediate driver's license holders are prohibited from operating a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with state or local safety belt and child restraint laws;

(C) A licensed driver who is 21 years of age or older must be in any motor vehicle operated by the Stage II intermediate driver's license holder, during some period of time between the hours of 10:00 p.m. and 6:00 a.m., as specified

by the State, unless covered by a State-approved exception;

(D) Stage II intermediate driver's license holders must have remained conviction free during Stages I and II for a combined period of not less than one year; and

(E) The Stage II intermediate driver's license must be distinguishable from Stage I learner's permits and Stage III driver's licenses; and

(iii) *Stage III*. A driver's license may be issued after an applicant has successfully complied with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of not less than one year. The Stage III driver's license must be distinguishable from Stage I learner's permits and Stage II intermediate driver's licenses.

(2) *Definitions*.

(i) *Conviction free* means that, during the term of the permit or license, the driver has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operation of a motor vehicle, to the extent required by State law.

(ii) *Successfully complied* means that the driver:

(A) Did not violate any of the conditions of the previous stage(s), or

(B) Has been subject to the consequences prescribed by State or local law for violating the conditions of the previous stage(s).

(3) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion. If the State's law, regulation or binding policy directive does not provide that Stage I permits and Stage II and Stage III licenses must be distinguishable, the State shall submit either:

(A) Sample permits and licenses, which contain visual features that would enable a law enforcement officer to distinguish between the permit and the licenses; or

(B) A description of the State's system, which enables law enforcement officers in the State during traffic stops

to distinguish between the permit and the licenses.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a copy of any changes to the State's law, regulation, binding policy directive, permit or licenses, or State system or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations, binding policy directives, permit or licenses, or State system.

(e) *Program for drivers with high BAC*—(1) *Criterion*. Programs to target individuals with a high BAC who operate a motor vehicle.

(i) The programs shall establish a system of graduated sanctions for individuals convicted of operating a motor vehicle while under the influence of alcohol, under which enhanced or additional sanctions apply to such individuals if they were determined to have a high BAC.

(ii) The threshold level at which the high BAC sanctions must begin to apply may be any BAC level that is higher than the BAC level established by the State that is deemed to be or equivalent to the standard driving while intoxicated (DWI) offense, and less than or equal to 0.20 BAC.

(2) *Definitions*. *Enhanced or additional sanctions* means the imposition of longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, mandatory assessment and treatment as appropriate, or other consequences that do not apply to individuals who were not determined to have a high BAC.

(3) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion. In addition, the State shall submit the provisions that set forth the sanctions under its standard DWI offense.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a copy of any changes to the State's law, regulation or binding pol-

icy directive or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

(f) *Young Adult Drinking and Driving Program*—(1) *Criterion* A young adult drinking and driving program designed to reduce the incidence of operating a motor vehicle while under the influence of alcohol by individuals between the ages of 21 and 34 that provides for:

(i) A Statewide public information and awareness campaign for young adult drivers regarding alcohol-impaired driving laws, and the legal and economic consequences of alcohol-impaired driving; and

(ii) Activities, implemented at the State and local levels, designed to reduce the incidence of alcohol-impaired driving by drivers between the ages of 21 and 34 that involve:

(A) The participation of employers;

(B) The participation of colleges or universities;

(C) The participation of the hospitality industry; or

(D) The participation of appropriate State officials to encourage the assessments and incorporation of treatment as appropriate into judicial sentencing for drivers between the ages for 21 and 34 who have been convicted for the first time of operating a motor vehicle while under the influence of alcohol.

(2) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit:

(A) A description and sample materials documenting the State's Statewide public information and awareness campaign;

(B) A description and sample materials documenting activities designed to reduce the incidence of alcohol-impaired driving by young drivers, which must involve at least one of the four components contained in paragraph (f)(1)(ii) of this section; and

(C) A plan that outlines proposed efforts to involve in these activities all four components contained in paragraph (f)(1)(ii) of this section.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit:

(A) An updated description of its Statewide public information and awareness campaign;

(B) A description and sample materials documenting activities designed to reduce the incidence of alcohol-impaired driving by young drivers, which must involve:

(1) At least two of the four components contained in paragraph (f)(1)(ii) of this section in the second fiscal year the State receives Section 410 funds based on this criterion;

(2) At least three of the four components contained in paragraph (f)(1)(ii) of this section in the third fiscal year the State receives Section 410 funds based on this criterion; and

(3) All four components contained in paragraph (f)(1)(ii) of this section in the fourth or subsequent fiscal year the State receives Section 410 funds based on this criterion; and

(C) An updated plan that outlines proposed efforts to involve all four components contained in paragraph (f)(1)(ii) of this section, until the State's activities involve all four components.

(g) *Testing for BAC*—(1) *Criterion*. (i) In FY 1999 and FY 2000, an effective system for increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes, under which:

(A) *BAC testing law*. The State's law provides for mandatory BAC testing for any driver involved in a fatal motor vehicle crash;

(B) *BAC testing data*. The State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

(C) *BAC testing symposium*. The State has plans to conduct, or conducted no more than two years prior to the date of its application, a symposium or workshop designed to increase the percentage of BAC testing for drivers involved in fatal motor vehicle crashes. The symposium or workshop must be attended by law enforcement officials,

prosecutors, hospital officials, medical examiners, coroners, physicians, and judges; and must address the medical, ethical, and legal impediments to increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes.

(ii) In FY 2001 and each subsequent fiscal year, a percentage of BAC testing among drivers involved in fatal motor vehicle crashes that is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

(2) *Definitions*—(i) *Drivers involved in fatal motor vehicle crashes* includes both drivers who are fatally injured in motor vehicle crashes and drivers who survive a motor vehicle crash in which someone else is killed.

(ii) *Mandatory BAC testing* means a law enforcement officer must request each driver involved in a fatal motor vehicle crash to submit to BAC testing.

(3) *Demonstrating compliance in FY 1999 and FY 2000*. (i) To demonstrate compliance based on this criterion in FY 1999 or FY 2000, the State shall submit:

(A) A copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory BAC testing requirement, as provided in paragraph (g)(1)(i)(A) of this section;

(B) A statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; or

(C) A description of the planned or completed symposium or workshop, including a copy of the actual or proposed agenda and a list of the names and affiliations of the individuals who attended or who are expected to be invited to attend, except as provided in paragraph (g)(3)(ii)(C).

(ii) To demonstrate compliance in FY 2000:

(A) If in the first fiscal year the State demonstrated compliance under

paragraph (g)(3)(i)(A), the State may submit instead a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the States laws, regulations or binding policy directives.

(B) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(B), the State may submit instead a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State continues to be equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

(C) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(C), the State shall submit instead a copy of the report or other documentation that was generated as a result of the symposium or workshop, with recommendations designed to increase BAC testing for drivers involved in fatal motor vehicle crashes, and a plan that outlines how the recommendations will be implemented in the State.

(4) Demonstrating compliance beginning in FY 2001. To demonstrate compliance for a grant based on this criterion in FY 2001 or any subsequent fiscal year, the State shall submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

[63 FR 71700, Dec. 29, 1998, as amended at 65 FR 46355, July 28, 2000]

**§ 1313.6 Requirements for a performance basic grant.**

(a) *Criterion.* A State will qualify for a performance basic incentive grant of 25 percent of the State's 23 U.S.C. 402 apportionment for FY 1997 if:

(1) The percentage of fatally injured drivers in the State with a BAC of 0.10 percent or greater has decreased in each of the three most recent calendar

years for which statistics for determining such percentages are available as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; and

(2) The percentage of fatally injured drivers in the State with a BAC of 0.10 percent or greater has been lower than the average percentage for all States in each of the same three calendar years.

(b) *Calculating percentages.* (1) The percentage of fatally injured drivers with a BAC of 0.10 percent or greater in each State is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(2) The average percentage of fatally injured drivers with a BAC of 0.10 percent or greater for all States is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(3) Any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in each of the three most recent calendar years, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may calculate for submission to NHTSA the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for those calendar years, using State data.

(c) *Demonstrating compliance.* (1) To demonstrate compliance with this criterion, a State shall submit a statement certifying that the State meets each element of this criterion, based on the percentages calculated in accordance with paragraphs (b)(1) and (b)(2) of this section.

(2) Alternatively, a State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may demonstrate compliance with this criterion